

Joint Statement of
Christopher Shays and Michael Thibault, Co-Chairs
The Commission on Wartime Contracting in Iraq and Afghanistan

Hearing on:
Contractor Business Systems

342 Dirksen Senate Office Building, Washington, DC
August 11, 2009

Good morning. I am Christopher Shays, co-chair of the Commission on Wartime Contracting in Iraq and Afghanistan. Thank you for attending this hearing on Contractor Business Systems.

I will make an opening statement on behalf of Co-Chair Michael Thibault and myself. Mr. Thibault will provide the joint opening statement at tomorrow's hearing in this room on Linguist Support Services in Theater.

The other Commissioners at the dais today are:

Clark Kent Ervin,
Grant Green,
Linda Gustitus,
Robert Henke,
Charles Tiefer, and
Dov Zakheim.

Congress established this Commission by statute in 2008 as an independent, bipartisan body to examine a wide range of issues relating to wartime contracting, to extract lessons learned, and to make specific recommendations to improve structures and practices to promote achievement of national objectives and to reduce waste, abuse, and fraud in contracting.

We are hard at work to fulfill that mandate. Commissioners and our professional staff have conducted hundreds of interviews, carried out research, made numerous trips to the Southwest Asia theater, and held hearings with government and contractor witnesses. On June 10 of this year, we issued “At What Cost? Contingency Contracting in Iraq and Afghanistan,” our interim report to Congress. A detailed final report will follow after we complete a full work plan to cover issues ranging from organizational structures and personnel issues to practices for defining contract requirements and monitoring performance.

Earlier hearings have highlighted the roles and findings of special and departmental inspectors general and the operation of the multi-billion-dollar “LOGCAP” contract that provides logistical support to U.S. operations in Iraq and Afghanistan. Today we focus on another vital aspect of the contracting world: the vast and complex business systems intended to support and document contractors’ billing, labor hours, estimates, purchases, subcontractor management, and other activities.

Ebenezer Scrooge’s business system consisted of a shivering Bob Cratchit making quill-pen entries in a ledger. Today’s business systems comprise policies, practices, internal controls, and intricate software with millions of lines of computer code, often customized to accommodate legacy systems, differing regulatory or accounting requirements, and multiple lines of business. There are literally millions of accounting transactions that need to be recorded, properly billed to the government, and used to support estimates for future contracts. Over \$100 billion of contract costs have been estimated, recorded, billed, and controlled using these business systems.

The complexity of these systems gives them incredible power for documenting and managing business operations — but also the potential to create formidable obstacles to transparency for oversight and audit when poorly designed, incorrectly used, or not updated. Those weaknesses and obstacles are at center

stage in this hearing.

We will swear in two panels of witnesses today. The first panel will represent federal agencies whose work involves dealing with or auditing contractor business systems. Those witnesses are:

- Jeff Parsons, Executive Director of the Army Contracting Command;
- April Stephenson, Director of the Defense Contract Audit Agency (DCAA); and
- David Ricci, Director of Contract Business Operations at the Defense Contract Management Agency (DCMA).

Our second panel will consist of witnesses from the contracting industry. The three companies represented are the three primary contractors for the LOGCAP IV logistics contract. The witnesses are:

- William Ballhaus, President and CEO of DynCorp;
- William Walter, Senior Vice President and Director of Government Compliance at KBR; and
- David Methot, Chief Compliance Officer with Fluor Government Group.

Before we hear our witnesses' testimony and their responses to questions from the Commissioners, I want to offer some background remarks on the purpose of today's hearing.

From 2001 through mid-2009, Congress has appropriated about \$880 billion to fund U.S. overseas contingency operations, with the great majority of that funding devoted to Iraq and Afghanistan. Over that period, America's reliance on contractors has grown to unprecedented proportions to support logistics, security, and reconstruction efforts related to those operations.

More than 240,000 contractor employees—about 80 percent of them foreign nationals—have worked in Iraq and Afghanistan at any one time to support the

Department of Defense. Additional contractor employees support the Department of State and the U.S. Agency for International Development.

Contractor employees outnumber U.S. military personnel in both theaters. They have a critical mission and, according to reports from the military in theater, they are doing a good job providing security, transportation, meals, laundry and other services.

The questions raised today should in no way detract from the overwhelmingly good opinions of contractors' support for U.S. missions — or obscure the fact that nearly 1,400 contractor employees have died on duty in Southwest Asia. The questions do, however, reflect serious concerns about government's ability to evaluate the costs of contractor services and provide good stewardship of taxpayer dollars. Are we spending too much for services for which we could and should be paying much less? Are we overpaying and wasting precious resources?

The Commission's interim report, "At What Cost?," called policymakers' and lawmakers' attention to eight "issues of immediate concern" that we felt should not languish unaddressed until completion of our final report. One of the eight was contractor business systems, about which we simply said, "Too many contractor business systems are inadequate and must be fixed."

Commission staff examined a selection of reports on 100 business systems used by 15 contractors who had received \$43 billion in contracts for work in Iraq and Afghanistan. We learned that 30 of those 100 systems had been judged "inadequate" or "inadequate in part" by the Defense Contract Audit Agency. Fully *half* of the billing and compensation systems were considered inadequate. Every other category of applicable business systems — accounting, budget, electronic data processing, Indirect and Other Direct Cost, labor, and purchasing — also showed inadequacies, although to a lesser extent.

After we issued the Interim Report, DCAA identified three more contractor

business systems as inadequate, including the labor, billing, and compensation systems that are essential parts of a contractor's overall management-control structure. This issue of inadequate business systems in the contingency-contracting environment is growing. But after more than six years, the opposite should be expected.

This is a big problem that should concern every Member of Congress and every taxpayer. As the Commission said in its interim report, "Significant deficiencies in contractor systems increase the likelihood that contractors will provide proposal estimates that include unallowable costs or that they will request reimbursement of contract costs to which they are not entitled or which they cannot support."

The Commission's May 2009 hearing heard that, through fiscal year 2008, DCAA had taken exception to over \$13 billion in questioned and unsupported costs associated with the efforts in theater. Some of these shortcomings reflect inconsistent or ineffective operations of contractor business systems. And even if further inquiries provide documentation for questioned costs, the system shortcomings demand extra time and effort from federal oversight personnel and higher costs for taxpayers.

DCAA has also testified that inadequate business systems may prevent the government from closing out some Iraq and Afghanistan contracts for years because of missing or incorrect data.

U.S. Army Contracting Command previously testified before this Commission about "overtaxed business systems" under LOGCAP III that created problems with managing subcontractors, making accurate estimates, reporting costs and purchases, and other issues. Army Contracting Command has adopted a policy under the new, three-vendor, task-order-competitive LOGCAP IV contract that segregates 15 percent of the award-fee pool to reflect management, business systems, and small-business subcontracting performance. That is a welcome reform, but the test will be in its consistent and strict application.

The harsh fact we still face is that some contractor business-system deficiencies have remained uncorrected without consequences for months or even years. Federal regulations *require* contractors to maintain adequate business systems. Regulations also permit — but do not require — contracting officers to withhold payments when a contractor fails to correct significant deficiencies. But previous DCAA testimony indicates that many contractors continue to operate inadequate business systems with little fear of effective discipline.

Further, there appear to be disagreements at times between DCMA and DCAA on whether withholds should be imposed after a DCAA determination of inadequacy. We will explore these disagreements at today's hearing.

This state of affairs is both alarming and puzzling. Why can't private corporations, who don't face the bureaucratic obstacles to change of a federal department, find ways to make prompt corrections to systems that log vital data? How can large corporations manage their affairs effectively and provide accurate information to shareholders — let alone meet their regulatory obligations to the federal government — with business systems that are truly inadequate? Are federal definitions of adequacy irrelevant to real-world operations, or are contractors using some parallel system of enterprise management that remains invisible to federal oversight?

We don't intend to give the government a free pass on this issue, however. Contractors are not the only ones with business-system issues. For example, the business-system modernization program at the Department of Defense has been on the Government Accountability Office's high-risk list since 1995. Tackling that issue is outside the Commission's mandate. But we can still ask: Is government doing *its* job to ensure that contractors comply with federal requirements? If the procuring contracting officer, the administrative contracting officer, and the auditor can't ensure that needed improvements are timely made, who can? And who is accountable on the federal side of contracting?

These are just a few of the questions that my colleagues and I hope to learn more about in today's hearing. Again, we thank our witnesses for their cooperation in this session. As is customary, a question-and-answer period will follow the testimony. After we adjourn, the hearing record will remain open for 10 business days to allow responses to questions for the record.

